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December 21, 2010

VIA ELECTRONIC FILING

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

228507

Re: ***Texas Municipal Power Agency v. BNSF Railway Company,***
STB Docket No. NOR 42056

Dear Ms. Brown:

This letter is BNSF Railway Company's ("BNSF") response to the request for expedited treatment set forth in Texas Municipal Power Agency's ("TMPA") Petition for Enforcement of Decision filed on December 17, 2010 in the above-captioned matter. TMPA requests that the Board direct BNSF "to not charge (through March 31, 2021) more than the rate listed in the 'SAC Rate' and 'Tariff Rate' columns of its decisions served September 27, 2004 and October 29, 2004." Petition at 4. TMPA asks for expedited treatment of its Petition and further asks that the Board issue the requested order before January 1, 2011. Petition at 1.

TMPA has neither cited any authority nor provided any justification for asking the Board to rule on its Petition before January 1, 2011, which is less than two weeks away. Under the Board's rules, BNSF has 20 days to respond to the Petition. 49 C.F.R. §1104.13. TMPA cannot override the rights of a party under the Board's rules merely by asking the Board to rule on a motion before the 20-day period has expired. Such an accelerated schedule would effectively deprive BNSF of an opportunity to respond to the Petition and would thereby preclude the Board from considering fully the issues raised in the Petition.

The Board need not be concerned that denial of TMPA's request for a ruling by January 1, 2011 will in any way prejudice TMPA. TMPA's Petition and request for an expedited decision are grounded on the claim that under prior Board decisions in this case "BNSF was barred from charging any rate higher than that listed as the 'SAC rate' for years 2011-2021." Petition at 4. That claim is manifestly false. There is no Board decision "barring" BNSF from

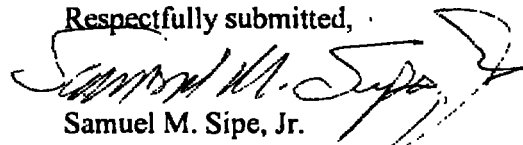
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charging any rate for the period 2011-2021 or setting a SAC maximum rate for that period. As the materials submitted as attachments to TMPA's Petition show, the Board prescribed rates for the period Q2 2001 through 2010. Rates for this period are prescribed as "Higher of SAC rate or 180% R/VC rate." (Table 2, Revised Rate Prescription.)¹ The Board did not prescribe a rate for any period from 2011 through Q1 2021. Nor did it say that there is a SAC maximum rate that BNSF could not exceed.

Thus, there is no basis for the extraordinary relief requested here that might justify the Board suspending its rules and ordering accelerated briefing. Moreover, if the Board were ultimately to conclude, contrary to the plain language of its prior decisions, that the Board prescribed rates beyond 2010, BNSF would be required to return to TMPA any amount collected in excess of the prescribed rate. There is no reason to accelerate the established time period for BNSF to respond to TMPA's claims since TMPA's interests are already fully protected.²

BNSF intends to file its response to TMPA's Petition by January 6, 2011, 20 days after TMPA's Petition was filed. In the meantime, there is no reason for the Board to depart from its standard procedural rules.

Respectfully submitted,



Samuel M. Sipe, Jr.
Counsel for BNSF Railway Company

cc: Counsel for Texas Municipal Power Agency

¹ The Board has consistently recognized that a rate cannot be prescribed at a level below 180 percent of URCS variable costs.

² TMPA has known since at least late September 2010 that BNSF takes the position that there is no rate prescription in this proceeding extending beyond the end of 2010. See Petition at Exhibit 1. If TMPA actually believed it would suffer harm if the issue were not resolved before the end of the year, TMPA should not have waited until December 17 to file its Petition.